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Date 1/11/99  
Signature [REDACTED]

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OP:E:EO:T:3

NOV 24 1998

EIN: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the nonprofit laws of [REDACTED]. Article III of your articles of incorporation provides that your stated purposes are as follows:

The purpose for which the corporation is organized is the transaction of any and all lawful business for which a nonprofit corporation may be incorporated under the laws of [REDACTED] ...

Article IV states that:

"the corporation intends to provide facilitation of and access to information and solutions to health and first aid, and survival questions worldwide, using all media vehicles for exposure."

You state that your activities will include creating and publishing a [REDACTED]. You state that your [REDACTED] will consist of [REDACTED] pages and will be written at a [REDACTED] grade level. [REDACTED] will be reproduced in lots of [REDACTED] by one of several printing companies.

[REDACTED] will be a compilation of information previously made available to the public by the American Red Cross, the Federal Emergency Management Agency (FEMA), and other disaster aid and health information organizations. [REDACTED] will consolidate and compile information on solutions to health, first aid, general disaster preparedness, and survival.

You state that you intend to sell [REDACTED] to schools, churches, and various youth organizations nationwide. You state that [REDACTED] is intended to be used as a fundraising item by these organizations and offered for resale in their fundraising programs. You state that [REDACTED] will be sold to these organizations in a price range of \$ [REDACTED] to \$ [REDACTED] per [REDACTED]. You state that your fee for [REDACTED] will help cover the costs incurred in the development of [REDACTED]. You indicate that these organizations will be permitted to retain [REDACTED] of the retail sale price of \$ [REDACTED] per [REDACTED].

You state that [REDACTED] will refer to various products including first aid and health care related items such as first aid kits and water purification solutions. You state that you will offer some of these products for sale on your web site. You state that you will enter into contracts with companies that conduct similar sales activities to sale these products. You state that you will treat the revenues from this activity as unrelated business income.

You will also provide a coupon booklet with [REDACTED]. Your coupon booklets will consist of manufacturers' discount coupons offered on products sold by major pharmaceutical companies. You state that this is another way for these companies to advertise and market through a nonprofit. You state that corporations will have the ability to utilize your resources for new product releases, research programs, and product or service info-mercials via all media options and fund these projects through their contributions. You state that the fees received from pharmaceutical companies for their participation in your coupon booklet advertising program will be treated as unrelated business income.

You state that the revenues from your coupon booklets and sales of first aid equipment and other related products under contracts described above will be used to cover the balance of the costs of the creation and dissemination of your [REDACTED]. You also propose to use these revenues to acquire medicines and medical supplies for other nonprofit organizations assisting needy children.

You state that since you are relying on donations from the public and want to be self sufficient, any revenues you make from the sale of [REDACTED], from advertising partnerships, or from the sales of products on your web site will be used to offset the differences between the actual costs associated with the production and handling of [REDACTED] and the actual price you charge the organizations purchasing [REDACTED]. After covering your operating expenses, remaining revenues will be used to

purchase medicines and medical supplies for nonprofit organizations assisting children.

Your president and founder is [REDACTED] Your vice president is [REDACTED] [REDACTED] will be a salaried employee of the corporation and will serve on your board of directors.

Section 501(c) (3) of the Internal Revenue Code provides for the exemption of organizations that are organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any shareholder or individuals.

Section 1.501(c) (3)-1(a) (1) of the Income Tax Regulations states that in order for an organization to be exempt as an organization described in section 501(c) (3), it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c) (3)-1(b) (1) (i) of the regulations provides that, in general, an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes, and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(a)-1(c) of the Income Tax Regulations defines "private shareholder or individual" as persons having a personal and private interest in the activities of the organization.

Section 1.501(c) (3)-1(c) (2) of the regulations provides that an organization will not be considered as operating exclusively for charitable purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c) (3)-1(c) (1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c) (3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c) (3)-1(d) (1) (ii) of the regulations provides that an organization is not organized or operated exclusively for

one or more of the purposes specified in subdivision (i) of section 1.501(c)(3)-1(d)(1) unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513.

Rev. Rul. 72-369, 1972-2 C.B. 245 provides that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. In this case the organization was formed to provide managerial and consulting services for nonprofit organizations exempt from Federal income tax under section 501(c)(3) of the Code to improve the administration of their charitable programs. The organization enters into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The services consist of writing job descriptions and training manuals, recruiting personnel, constructing organizational charts, and advising organizations on specific methods of operation. These activities are designed for the individual needs of each client organization. Rev. Rul. 72-369 concludes that the fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

In International Postgraduate Medical Foundation, T.C. Memo 1989-36, the court held that the Service had properly revoked the 501(c)(3) status of an organization that did not operate exclusively for exempt purposes. The court based its conclusion, in part, on the fact that a related for-profit corporation had benefitted substantially from the manner in which the activities of the exempt organization were conducted. In these circumstances, the court said, an organization is not operated exclusively for exempt purposes within the meaning of section

501(c)(3) of the Code, even though it furthers other exempt purposes.

In this case, the organization had the substantial non-exempt purpose of benefitting a for-profit travel agency controlled by parties related to the organization. The organization had been formed and was controlled by an individual who had previously operated all tour operations through a for-profit entity. The travel agency received substantial fees from customers attending tours promoted by the organization, under a non-competitive arrangement.

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), aff'g T.C.M. 84-349, the court upheld denial of 501(c)(3) status to an organization because it was operated for the non-exempt purpose of providing a market for the services of a for-profit fund-raising firm owned by parties related to the organization. Key facts considered by the court included that employees of the for-profit firm devoted two-thirds of their time to the organization's business that the majority of the organization's income went to payments to the for-profit firm; and that the controlling parties profited from the relationship.

est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), held that an organization that was essentially controlled by a separate for-profit commercial entity was operated for a substantial non-exempt purpose where it promoted a certain body of knowledge, which was owned by that commercial entity. Whether the agreements between the parties reflected arm's length negotiation was irrelevant to the analysis. The court noted that the commercial entity was trading on the organization's tax-exempt status.

In Better Business Bureau v. United States, 326 U.S. 279, 283 (1945) the U.S. Supreme Court stated in a case involving a claim for exemption on exclusively educational grounds:

In order to fall within the claimed exemption an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy an organization's exemption regardless of the number or importance of truly educational purposes.

In B.S.W. Group, Incorporated, 70 TC No. 31, the Tax Court held that an organization offering consulting and research services for a fee to various nonprofit organizations did not qualify for exemption under section 501(c)(3) of the Code. The fees charged were set at or close to cost, but in no event would they be less than the amount needed to cover the cost of

providing services. Several factors were listed by the court as militating against exemption. The organization's financing did not resemble that of the typical 501(c)(3) organization in that it did not solicit or receive voluntary contributions from the public. Its only source of income was fees for services. Other negative factors were the manner in which the organization's activities were conducted, the commercial hue of those activities, competition with commercial firms providing similar services and the existence and amount of annual or accumulated profits.

You are not organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. The sale of your [REDACTED] to unrelated churches, school, and youth organizations for resell in their fundraising programs under the circumstances described constitutes a substantial nonexempt purpose and activity within the meaning of section 1.501(c)(3)-1(c)(1) of the regulations.

In addition, the provision of your coupon booklets serves the private business interests of the participating pharmaceutical companies rather than public interests pursuant to section 1.501(c)(3)-1(d)(1)(ii). The distribution of your coupon booklets provides a means of advertising for the companies' products and offers discounts on the sale of companies' products.

Under the circumstances your sale and distribution of your [REDACTED], the distribution of your coupon booklets, and the sale of other products through third party contractors constitutes the conduct of regular publishing and commercial sales operations which serve private interests rather than public interests pursuant to section 1.501(c)(3)-1(d)(1)(ii) of the regulations. B.S.W. Group, Incorporated, supra; International Postgraduate Medical Foundation, supra; Church by Mail, Inc. v. Commissioner, supra; est of Hawaii v. Commissioner, supra; and Senior Citizens of Missouri, Inc. v. Commissioner, supra.

Like the organization described in Rev. Rul. 72-369, the sale and distribution of your [REDACTED] is not devoted to exclusively educational or charitable purposes within the meaning of section 501(c)(3) and Better Business Bureau v. United States.

Accordingly, we conclude that you do not qualify for exemption under section 501(c)(3) of the Code.

You are required to file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

You have a right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power attorney and otherwise qualify under our Conference and Practice Procedures.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax returns or the filing of tax returns should be addressed to that office.

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope:

Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224  
OP:E:EO:T:3,  
Attention: [REDACTED] Room 6137.

Sincerely,

(signed) Kenneth Earnest

Kenneth J. Earnest  
Acting Chief,  
Exempt Organizations  
Technical Branch 3